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January 28, 1997

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

William F. Caton
Secretary
Federal Communications Commission
1919 M Street, NW, Room 222
Washington, DC 20554

RM-8951

Re: **Letter Amendment to Petition for Rulemaking**

Dear Mr. Secretary:

On September 4, 1996 certain clients of this firm (listed on p. 10 of Exhibit 1) (the "IVDS Licensees") filed a Petition for Rulemaking seeking a 10-year IVDS license term and a reamortization of the IVDS license debt (the "Petition"). By this letter, the IVDS Licensees hereby supplement and amend the requests first raised in the Petition for regulatory relief and rule changes.^{1/}

The Petition made the case for extending the term of the IVDS license to ten years, so that IVDS might be on the same license schedule as its competitors (PCS, SMR, cellular) in the wireless services arena. In addition, the Petition sought a reamortization of the IVDS license debt over a 10-year license term, with interest only payments for the first five years, followed by principal and interest over the final five years. The IVDS Licensees hereby reaffirm their request for that relief.

On July 25, 1996, the IVDS Licensees and others also filed a Petition for Reconsideration of Report and Order, 11 FCC Rcd 6610 (1996) (the "Order") (the "Petition for Reconsideration"), which urged the Commission to reconsider its decision to limit mobile IVDS transmitter units ("RTUs") to an effective radiated power ("ERP") level of 100 milliwatts. The IVDS Licensees reaffirm the positions stated in the Petition for Reconsideration, and respectfully request that the Commission grant the relief requested therein.^{2/}

^{1/} A copy of the Petition is contained in Exhibit 1. This letter is hereinafter referred as the "Amendment".

^{2/} The Petition for Reconsideration is Exhibit 2.

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Through this Amendment, the IVDS Licensees also ask the Commission to repeal the following rule sections: (i) Section 95.863(a) (duty cycle); (ii) Section 95.859(a)(2) (height/power ratios); (iii) Section 95.833 (construction benchmarks); and (iv) Section 95.813(b)(1) (ownership restrictions).

1. DUTY CYCLE.

The IVDS Licensees ask the Commission to include within its reconsideration of its Order repeal of the duty cycle limitations, now imposed by Section 95.863(a) of the Commission's Rules. As the Commission is aware, Section 95.863(a) requires that "the maximum duty cycle of each RTU shall not exceed 5-seconds per hour, or, alternatively, not exceed one percent (1%) within any 100 millisecond interval." 47 C.F.R. § 95.863(a). On June 26, 1995, the IVDS Licensees among others, had sought relief from the duty cycle in response to the Commission's NPRM on mobility for IVDS. In its subsequent Order, the Commission determined that "the duty cycle rule. . . can be relaxed" and it did eliminate the duty cycle rule entirely for (i) fixed and mobile transmissions where no TV Channel 13 predicted Grade B contour exists; and (ii) for fixed transmissions in Metropolitan Statistical Area ("MSAs") where the IVDS service contour overlaps the TV Channel 13 Grade B contour, as long as the IVDS transmissions are outside of the Grade B contour. Order at 6619. Notwithstanding these adjustments, the Order still leaves vast portions of the MSAs, as well as some Rural Service Areas ("RSAs"), subject to the operational straight-jacket of the 5-second duty cycle. This continuing technical restraint hampers both technology and service development by creating inconsistent operating guidelines for IVDS from area to area.

In reaching the conclusion to scale back but not repeal the duty cycle, the Commission also offered that: "(t)he duty cycle rule, however, was not one of the principal ways we intended to minimize the potential for interference. Rather it serves as an additional safeguard." (See, Report and Order 7 FCC Rcd 1630, 1635 (1992). If the duty cycle requirement, which imposes a substantial burden to the IVDS Licensees, is only a "back-up" or redundant broadcast signal safeguard, the Commission should eliminate it and free those Licensees to bring competitive wireless services to a broader sector of the public. In doing so, the Commission should incorporate by reference the Comments and Reply Comments previously filed by the IVDS Licensees and others, concerning the adverse effect of the duty cycle has on the embryonic IVDS industry.^{3/}

^{3/} Copies of the Comments and the Reply Comments are attached as Exhibits 3 and 4 respectively. Paragraphs 9-12 of the Comments and Paragraph 6 of the Reply Comments address the impact of the duty cycle requirement.

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2. HEIGHT/POWER RATIOS.

Further, the height and power limitations imposed upon the IVDS spectrum by current Section 95.859 of the FCC rules also serve as an unnecessary "governor" on the successful design, development, operation and service of IVDS systems. Indeed, all of the technical limitations imposed by the Commission (largely at the insistence of the Maximum Service Television ("MSTV") constituency) are superfluous restraints because MSTV and other broadcasters will always have the ultimate interference protector: Section 95.861(e) of the Commission's rules. That Section mandates that each IVDS system licensee must investigate and eliminate interference to television broadcasting and reception from its component CTSs and RTUs within 30 days of the time it is notified in writing of an interference complaint by either an affected television station, an affected viewer, or the Commission. Should the IVDS licensee fail to eliminate the interference within the 30-day period, the CTS or RTU causing the interference must discontinue operation. 47 C.F.R. § 95.861(e). This sensible protection, which already exists, effectively balances the need for Channel 13 broadcasters to be protected from interference with the need for IVDS operators to expedite the design and delivery of an effective and economical service to the public.

3. CONSTRUCTION BENCHMARKS.

The Commission should eliminate altogether the construction benchmark set forth in Section 95.833 of the rules. The current construction benchmarks found in Section 95.833 of the Commission's rules also are unnecessary and could force wasteful spending on construction solely to meet administrative deadlines given that no commercially viable IVDS equipment is presently available for deployment. The Commission based the requirement for IVDS construction deadlines on two major objectives: (i) avoiding spectrum speculation and warehousing; and (ii) advancing the public interest associated with the expeditious deployment of IVDS systems for the public's benefit. See, Report and Order 7 FCC Rcd at 1641. These dual objectives are not advanced by requiring IVDS licensees to meet a construction benchmark when no economic or commercially deployable consumer equipment exists and, accordingly, no consumer services would be forthcoming through a premature buildout. Thus, forcing a buildout at this time would be nothing more than an expensive experience in futility, with no corresponding public benefit because service could not be provided to the public.^{4/}

^{4/} The Commission has just issued a Report that stresses the importance of flexibility in spectrum decisions, including such issues as rollout of service. G.L. Rosston and J.S. Steinberg, Using Market-Based Spectrum Policy To Promote The Public Interest, (January 1997). The report stressed that the spectrum flexibility was necessary to allow wireless licensees "to respond quickly to changing public demands for new and different services, as well as enabling users to

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On March 13, 1995, the Wireless Telecommunications Bureau waived the one-year construction "buildout" requirement of Section 95.833(a) for lottery licensees. In granting the one-year buildout waiver, the Bureau determined, *inter alia*, that: "there has been no evidence presented of speculation or warehousing" and "(m)oreover, we believe that providing licensees with additional flexibility in satisfying the construction benchmarks is desirable and consistent with our intent to allow for more flexible use of the spectrum." Order, 10 FCC Rcd 4014 (1995).

In addition, in responding to multiple requests for waiver of the one-year buildout requirement by IVDS auction licensees, the Commission concluded that "eliminating the one-year construction requirement will provide licensees with greater flexibility in selecting service options, obtaining financing, selecting equipment and other considerations related to the construction of their Systems. Such action will, in turn, promote the development of the IVDS industry." Report and Order, 11 FCC Rcd 2472, 2473 (1996). Moreover, the Commission succinctly stated that "the one-year construction requirement impedes the viability and evolutionary development of the IVDS spectrum." Id. This statement on its face is compelling justification for further relaxation on the buildout requirement.^{5/}

4. OWNERSHIP RESTRICTIONS.

In addition, Section 95.813(b)(1) of the Commission's rules, which precludes one IVDS licenses an MSA or RSA from having any financial interest in the other IVDS license in the same area, represents already outdated preconceptions about IVDS because it: (i) contemplates IVDS principally as an interactive television service; and (ii) fails to take into account the fact that a majority of the business which will likely flow to the IVDS spectrum will be telemetry-type functions (e.g., remote monitoring). The 500 kilohertz bandwidth is too narrow to carry any video or even picture quality content. Accordingly, any concern about IVDS' ability to exert "monopoly power" in either an interactive television or a wireless data context is without foundation. Indeed, IVDS' principal competition most likely will be wireless data service providers in the PCS, cellular and 220 SMR spectrum, all of whom have much more bandwidth and greater capitalization than does IVDS, and more importantly, a substantial competitive "headstart" over IVDS.

introduce innovative services and technologies rapidly without administrative costs or delays." Id., p. 10. Indeed, the Report concluded that where, as here, it is economically efficient to do so, "the Commission can make it possible for market forces to govern the rate at which spectrum is developed, and eliminate the need to rely on administrative judgment regarding when spectrum should be released." Id., p. 12.

^{5/}

In the alternative, the Commission should waive the three year construction benchmark in Section 95.833(a).

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This request for relief from Section 95.813(b)(1) also supplements a January 25, 1996 Request for Clarification of IVDS Ownership Rules^{6/} (the "Clarification Request") which previously sought relaxation of Section 95.813(b)(1). Please note that the relief sought in the Clarification Request was limited to management of both IVDS licenses in a market rather than outright spectrum ownership because it was suggested by attorneys in the Private Radio Bureau that such a relaxation could be accomplished quickly. However, the more appropriate relief is repeal of Section 95.813(b)(1) which thereby allow one IVDS licensee to own all or part of both IVDS licenses in a market, thus potentially expanding the operational bandwidth to 1,000 kilohertz in each market. This would enhance the flexibility of the spectrum by expanding the types of applications and services which IVDS can provide, all of which is in the public interest.

In summary, the IVDS Licensees seek: (i) grant of the Petition; (ii) grant of the Petition for Reconsideration; and (iii) grant of the relief requested in this Amendment, i.e., repeal of the following rule sections: (A) Section 95.863(a) (duty cycle); (B) Section 95.859(a)(2) (height/power ratios); Section 95.833 (construction benchmarks); and Section 95.813(b)(1) (ownership limitations).

In the face of these changes, MSTV and the National Association of Broadcasters still will have the "ultimate interference protector" in Section 95.861. Finally, with these changes, IVDS licensees will be in a position to provide wireless services in a competitive environment, thus benefiting the public from both a choice and price perspective.

The IVDS Licensees thank the Commission and staff for their consideration of these requests and look forward to having the opportunity to make IVDS a great success story.

Respectfully submitted



J. Jeffrey Craven

cc: D'Wana Speight, Esquire
Kathleen O'Brien Ham, Esquire
David Horowitz, Esquire

STAMP-IN

Before the
Federal Communications Commission
 Washington, DC 20554

In the Matter of)
)
)
 Amendment of Part 95)
 Extend the Terms of)
 Interactive Video Data Service)
 Licenses from Five to Ten Years)

RM - _____

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FEDERAL COMMUNICATIONS COMMISSION
 OFFICE OF SECRETARY

To: Chief, Wireless Telecommunications Bureau

PETITION FOR RULEMAKING

Pursuant to Section 1.401 of the Commission's Rules, 47 C.F.R. § 1.1401, Euphemia Banas, Trans Pacific Interactive, Inc., Wireless Interactive Return Path, L.L.C., New Wave Communications, L.L.C., Loli, Inc., Multimedia Computer Communication, Inc., Southeast Equities, Inc., Robert H. Steele, MAR Partnership, IVDS On-Line Partnership, A.B.R. Communications Inc., IVIDCO, L.L.C., Vision TV, Dunbar TV, Corp., and Legacy TV, Inc., all of which are Interactive Video and Data Service ("IVDS") licensees (the "Licensees" or "Petitioners"), request that the Commission: (a) extend the license term for IVDS providers from five (5) to ten (10) years and; (b) allow licensees that qualify for installment payments under the current FCC rules to extend the installment payment period from five (5) to ten (10) years.

Background

IVDS is a point-to-point short distance communications service that provides two-way interactive communication to subscribers located at fixed and mobile locations. 47 C.F.R. § 95.803(a): Amendment of Part 95 of the Commission's Rules to Allow Interactive Video and

Data Service Licensees to Provide Mobile Services to Subscribers, 11 FCC Rcd 6610 (1996).

— The FCC awards two IVDS licenses per Metropolitan Statistical Area ("MSA") and Rural Statistical Area ("RSA"). Amendment of Parts 0, 1, 2, and 95 of the Commission's Rules to Provide Interactive Video and Data Services, 7 FCC Rcd 1630 (1992); 47 C.F.R. § 95.803(b). Currently, the Commission issues IVDS licenses for a five-year term. 47 C.F.R. § 95.811(d).

IVDS technology is designed to provide real-time response to information displayed on a television set, pager, or personal computer screen through the use of a wireless remote control. Potential applications for IVDS include interactive messaging as well as commercial and two-way telemetry services, such as remote monitoring of utility services, vending machines, cable television, and home security systems. IVDS technology allows businesses to automate data collection tasks that have previously required manual readings. For example, a utility company can use an IVDS network to take readings from electricity meters several times a day; or even several times an hour. This allows the utility to offer time-of-day usage discounts and allows for more accurate billing and power demand estimation. Without IVDS technology, such constant monitoring would not be economically feasible. See Henderson, Electric Utilities Plug into Telecom, Phone +, June 1995, at 76; Reeves, The Emerging Utility Paradigm, Wireless, February 1996, at 14.

I. The Commission Has Authority To Grant a License Term of Ten (10) Years

The Commission has authority to grant a ten-year license term for IVDS. Section 154(j) of the Communications Act of 1934, as amended, allows the Commission to conduct proceedings "in such manner as will best conduce to the proper dispatch of business and to the ends of justice." 47 U.S.C. § 154(j) (1995). Further, Section 307(c) sets a maximum license period for

certain classes of providers. Any station other than a radio or television broadcasting station may have a license term of up to ten (10) years. 47 U.S.C. § 307(c). The Commission also has authority to modify the provisions of existing licenses by rulemaking. National Broadcasting Co., Inc. v. United States, 319 U.S. 190 (1943); California Citizens Band Assoc., Inc. v. United States, 375 F.2d 43 (9th Cir.), cert. denied 389 U.S. 844 (1967). Thus, the Commission has the authority to grant a ten-year license period for IVDS licensees.

II. The License Period For IVDS Providers Is Substantially Shorter Than For Providers With Similar Technologies And Market Areas

The FCC has designated a five-year licensing period for IVDS providers. 47 C.F.R. § 95.811(d). This contrasts with longer licensing periods for similar technologies. For example, broadcasting stations feature eight-year licenses. 47 U.S.C. § 307(c)(1)(Supp. 1996). Licenses for stations in Point-to-Point Microwave Radio, Local Television Transmission, Multipoint Distribution Service ("MDS"), and Digital Electronic Message Services are issued for a period of ten (10) years. 47 C.F.R. § 21.45(a). Similarly, the recently auctioned Personal Communication Services ("PCS") licenses are assigned for a ten-year period. 47 C.F.R. § 24.15.

Cellular systems, which are technologically very similar to IVDS, and are licensed using the same geographic boundaries, are awarded a ten-year license term. The Commission decided to grant all common carrier and fixed satellite licenses for a ten-year period because: (1) common carrier and fixed satellite service are rarely contested and are granted relatively routinely, (2) the public is adequately protected by regulatory tools other than renewal proceedings, and (3) longer license terms "would result in savings of Commission and licensee resources" by eliminating the cost of filing and processing renewal applications every five (5) years. Common Carriers and Satellite Licensing Procedures Pursuant to the Communications

Amendments Act of 1982, 53 RR 2d 1514, 1515 (1983) ("Common Carrier Licensing Report and

- Order"). Accordingly, for the same reasons that the Commission has provided for ten-year licenses for other MSA and RSA area providers, IVDS licensees should likewise have a ten-year license.

The FCC originally adopted a five-year license term for IVDS in order to deter trafficking in licenses that were granted by lottery. The FCC said the five year term "strikes a reasonable balance between the administrative burden on both the Commission and the applicant, and our desire to track the status of licensed IVDS operations. These rules will help to reduce any potential for trafficking in licenses by persons who have no real interest in constructing IVDS systems." Amendment of Parts 0, 1, 2, and 95 of the Commission's Rules to Provide for Interactive Video and Data Service, 7 FCC Rcd 1630, 1641, (1992). The need to monitor the IVDS industry to deter the trafficking and unjust enrichment that accompanied lotteries was eliminated when the Commission decided to award IVDS licenses by auction. ("The strongest measure to deter future instances of unjust enrichment in the lottery context has already been taken by Congress when, in the Budget Act, it granted the Commission auction authority . . .") Implementation of Section 309(j) of the Communications Act -- Competitive Bidding, 9 FCC Rcd 7373, 7375 (1994). Since the main purpose for the five year license period no longer exists, the Commission should extend the IVDS license term to ten years.

If the Commission finds a continued need to track the status of the IVDS industry, it can do so using other existing IVDS rules. IVDS licensees are required to file applications with the Commission to propose modifications to their systems (47 C.F.R. § 95.815(e), (f)), to assign or transfer control of their licenses (47 C.F.R. § 95.819, 95.821), and to provide three- and five-year

benchmark coverage reports (47 C.F.R. § 95.833). If the Commission needs further information, the existing reporting rules should be modified, rather than requiring a renewal filing.

III. The Short Five-Year License Period For IVDS Providers Inhibits Competition And Will Delay The Development Of IVDS

a. A Ten Year Term Will Help Assure Winning Bidders a Return on Their Investment

In the MDS context, the Commission has said that winning bidders "should be assured of receiving . . . licenses of a duration sufficient so that they may have a reasonable period of time to construct their systems and earn a return on the amounts they invested." Amendment of Parts 21 and 74 of the Commission's Rules With Regard to Filing Procedures in the Multipoint Distribution Service, 10 FCC Rcd 9589 (1995) ("MDS Report and Order"). Like MDS bidders, IVDS service providers took part in a competitive bidding process that resulted in expensive acquisitions of license rights. Due to these high costs and the delay in developing IVDS technology, a period longer than five (5) years is necessary for bidders to meet build-out projections and recoup the initial investment. Further investment in the still-developing IVDS technology could be curtailed if the license period is not extended, as individuals and corporations will hesitate to invest in a technology with such limited license periods.

As noted above, the Commission has also recognized the savings that will be realized by both providers and the Commission as a result of a ten-year term: "the longer license terms would result in savings of Commission and licensee resources." Common Carrier Licensing Report and Order at 1515. Potential savings include the cost of licensee personnel needed to complete renewal applications, legal costs, and filing fees. The FCC is well aware of the substantial demand imposed upon its staff by such filings. If a licensee needs to apply only once

every ten (10) years instead of once every five (5) years, the licensee's and the Commission's costs are cut in half.

b. A Ten-Year License Period Will Facilitate Financing Agreements

The Commission has also noted that "bidders who must arrange financing will need to assure lenders that they will have possession of their station licenses for a reasonably lengthy period of time." MDS Report and Order at ¶156. Likewise, IVDS providers must assure lenders that they will hold a license for a sufficient period to warrant financial investment. If a ten (10) year license is appropriate for MDS, so it should be for IVDS. Indeed, extending the IVDS license period to ten (10) years would help ensure that small enterprises who wish to compete in the IVDS market will be able to secure financing by convincing financial backers that an investment will have a sufficient period to turn profitable. This will have the added benefit of increasing the number of potential operators in the market, thereby advancing the public interest.

c. A Ten-Year Term Is Especially Helpful To Small Businesses and Entrepreneurs

As the Commission noted, awarding licenses with ten-year terms rather than shorter time spans "serves both prospective bidders and the Commission well." Id. at ¶157. The Commission determined that the ten-year period is "of sufficient certainty and length to be fair to parties who must now pay considerable sums, and perhaps obtain outside financing" in order to acquire licenses. Id. This is particularly true for small businesses, since they are more likely to require outside financing. The Commission has acknowledged the difficulty of small and start-up businesses in obtaining private funds. Implementation of Section 309(j) of the Communications Act -- Competitive Bidding, 9 FCC Rcd 2348, 2389-90 (1994). Due to this added difficulty in obtaining outside financing, small businesses in particular would benefit from

an extension of the licensing period. As the Commission has noted, financing is easier to obtain over a longer licensing period. Id. This is particularly true in the IVDS service, where delays in availability of equipment and service implementation have contributed to difficulty in attracting financing. Increasing small business participation will increase competition within each market and ensure that consumers receive a choice of IVDS providers. The 1993 Budget Act requires the Commission to encourage small businesses attempting to enter into the wireless industry. Omnibus Budget Reconciliation Act of 1993, P.L. 103-66 § 6002(j)(3)(B). Section 257 of the Telecommunications Act of 1996 ("Act") directs the Commission to identify and eliminate "market entry barriers for entrepreneurs and other small businesses in the provision and ownership of telecommunications services and information services . . ." Pub. L. 104-104, Section 203, 110 Stat. 56, 112. The Commission must also promote a national policy "favoring diversity of media voices, vigorous economic competition, technological advancement and promotion of the public interest, convenience and necessity." Id.

d. A Ten-Year License Period Will Facilitate Expansion of Coverage and Development of Regional and National IVDS Networks

No one at the FCC or in the wireless business would have predicted that two years after the IVDS MSA licensing auction, only a handful of IVDS systems would have been constructed and even those operate on only a trial basis. The delay is due to equipment manufacturing, and is clearly beyond the control of IVDS licensees. Therefore, it is particularly important to increase the duration of the IVDS license term so as to allow sufficient time for the development of the new service. Extension of the license term would allow expansion of IVDS networks and the development of regional systems. IVDS licensees, poised on the cutting edge of the nascent interactive multimedia industry, face challenges in constructing local, regional and national

systems that integrate wireless technologies with other technologies to provide new services for the public. With two years already expended, companies will need additional time to concentrate on constructing and servicing IVDS systems and expanding coverage to form national and regional IVDS networks.

The Commission has not yet conducted auctions to distribute IVDS licenses in RSAs, which are critical for establishing regional IVDS coverage. In other contexts, the Commission has recognized that carriers and the public benefit from MSA/RSA market consolidation. The Commission has said that MSAs and RSAs are "too small for the efficient provision of regional or nationwide mobile service" and that "cellular carrier's efforts have frequently been directed towards geographic aggregation to provide wider service areas for consumers and to lower costs of providing service." Amendment of the Commission's Rules to Establish New Personal Communications Services, 9 FCC Rcd 4957, 4987 (1994). Such regional coverage is essential for utilities and other potential IVDS customers that need comprehensive regional coverage. There is less incentive to form important alliances with utility companies and others if the shorter license period unnecessarily restricts the potential profits and usefulness of IVDS networks. Firms may decide that the cost and administrative burden of creating national networks is not justified if the network will be viable for less than five (5) years. IVDS consumers will be less willing to use IVDS and change out existing equipment if license terms expire in a few years.

The encouragement of regional and national networks will facilitate the realization of another Commission goal: stability and continuity of service in the marketplace. The Commission has made clear, both in cellular and related technologies such as IVDS, that stability and continuity of service to the public is vital. Amendment of Part 22 of the Commission's Rules

Relating to License Renewals in the Domestic Public Cellular Radio Telecommunications

Service, 7 FCC Rcd. 719 (1992). A ten-year license term will help produce the strong networks necessary to realize this goal.

**IV. Extension Of Installment Payments
To The Entire Length Of A Ten-Year License Term**

Currently, small businesses may elect to pay the full amount of their IVDS license bid in installments over the term of their licenses. 47 C.F.R. § 95.816(d)(3). This allows a small business to spread the cost of acquiring the IVDS license over the length of the license period. The current rules recognize the utility of such an approach. Without installment payments, many companies could not raise the initial investment necessary to enter the IVDS industry.

Petitioners ask the Commission to expand this common-sense installment payment plan to the new ten-year license period. For the reasons that the Commission found dispositive in initiating the installment payment option for the five-year license period, expansion of the installment payment plan makes sense over the ten-year period as well. This extension would require no change in the current wording of the regulation. The Commission can simply issue to each licensee a revised IVDS Auction Payment Schedule, and thereby enhance IVDS licensees' ability to operate a successful business by stretching the repayments over a longer licensing term, and thus allowing the licensees to direct resources to the development of IVDS services to the public. This approach would also enable the Commission to re-program its auction payment database, which is consistently unreliable.

Conclusion

The Commission deemed a ten-year license period beneficial for the cellular, MDS, and other market-based wireless services. For the same reasons, extending the IVDS license period

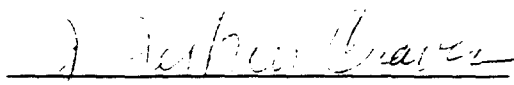
from a five-year to a ten-year period would benefit the licensees, the Commission, and the consumer public.

The Petitioners have charted a positive, practical course of seeking a longer licensing term and a longer period of time to pay-off its obligations. The Commission should promptly and enthusiastically embrace this proposal and expedite the Rulemaking process.

WHEREFORE, it is respectfully requested that the Commission issue a Notice of Proposed Rulemaking to amend Section 95.811(d) of the Commission's Rules to extend the license period for IVDS system licenses to ten (10) years. Further, the Commission is requested to keep the plain language of Section 95.816(d)(3) and allow the use of installment payments over the length of the ten (10) year license period.

Respectfully submitted,

Euphemia Banas
Trans Pacific Interactive, Inc.
Wireless Interactive Return Path, L.L.C.
New Wave Communications, L.L.C.
Loli, Inc.
Multimedia Computer Communication, Inc.
Southeast Equities, Inc.
Robert H. Steele
MAR Partnership
IVDS On-Line Partnership
A.B.R. Communications Inc.
IVIDCO, L.L.C.
Vision TV
Dunbar TV Corp.
Legacy TV, Inc.


J. Jeffrey Craven
Janet Fitzpatrick
PATTON BOGGS, L.L.P.

Dated: September 4, 1996

Proposed Revised Rule - 47 C.F.R. § 95.811(d)

"The term of each IVDS system license and each CTS license is ~~ten~~ years."

SEARCHED

**Before the
Federal Communications Commission
Washington, D.C. 20554**

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JUL 25 1996

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of)
)
Amendment of Part 95 of the)
Commission's Rules to Allow)
Interactive Video and Data)
Service Licensees to Provide)
Mobile Service to Subscribers)

WT Docket No. 95-47

PETITION FOR RECONSIDERATION

Euphemia Banas, Trans Pacific Interactive, Inc., Wireless Interactive Return Path, L.L.C., New Wave Communications, L.L.C., Loli, Inc., Multimedia Computer Communication, Inc., KMC Interactive TV Inc., Southeast Equities, Inc., Robert H. Steele, MAR Partnership, IVDS On-Line Partnership, A.B.R. Communications Inc., IVIDCO, L.L.C., Vision TV, Dunbar TV, Corp., and Legacy TV, Inc., all of which are Interactive Video and Data Service ("IVDS") licensees (the "Licensees"), acting through counsel and in accordance with Section 1.106 of the Commission's Rules, hereby file this Petition For Reconsideration ("Petition") of the Commission's decision to limit mobile IVDS response transmitter units ("RTUs") to operate with an effective radiated power ("ERP") of one-hundred (100) milliwatts or less. Report and Order, Amendment of Part 95 to Permit IVDS Licensees to Provide Mobile Service, WT Docket No. 95-47, RM-8476 (released May 30, 1996) ("1996 Report and Order"). This decision is unnecessary; technically indefensible; arbitrary and capricious; and is not supported by

the administrative record. The Commission should act promptly to eliminate this ERP limitation. In support hereof, the Licensees set forth the following:

I. Background

1. When it originally authorized IVDS service, the FCC determined that it would limit the ERP of fixed RTUs to a maximum of twenty (20) watts. Amendment of Parts 0, 1, 2 and 95 of the Commission's Rules to Provide for IVDS, 7 FCC Rcd. 1630 (1992) ("1992 Report and Order"). The Commission imposed this limit due to a concern for the possibility of interference with television broadcast Channel 13, especially within the Grade B service contour. Id. at 1635. The Commission also required the RTUs and cell transmitter stations ("CTSs") to contain automatic power controls that would limit the ERP to the minimum necessary for successful communication. Id. Finally, the FCC restricted the CTSs to a maximum ERP of one (1) watt when located within the Channel 13 Grade B service contour. Id. at 1634.

2. Four years later, the Commission adopted the 1996 Report and Order, allowing IVDS licensees to provide mobile service. Since mobile RTUs can move into and out of a Channel 13 Grade B service contour, the Commission limited the ERP of all mobile RTUs to one-hundred (100) milliwatts, whether or not they were operating within a Channel 13 Grade B service contour. Id. at 8.

II. Argument

3. This latest decision to limit the mobile RTUs to one-hundred (100) milliwatts is unnecessary, technically indefensible, and not in the public interest. Although one of the Commission's principle concerns regarding new technologies is to ensure that they do not cause interference to other services, limiting mobile IVDS RTUs to one-hundred (100) milliwatts is unnecessary because of existing interference protections.

Furthermore, the limitation creates substantial barriers to the early construction of IVDS networks, postponing service and increasing costs to the public. Finally, by imposing the restriction, the Commission failed to respond to the logical, technical and practical arguments which supported increasing the power limitation on mobile RTUs.

A. The Restriction To 100 Milliwatts ERP Is Unnecessary.

4. The FCC decision to limit mobile RTUs operating anywhere to one-hundred (100) milliwatts ERP, while allowing a fixed RTU within a Grade B contour operate at up to twenty (20) watts and a CTS within a Grade B contour operate at one (1) watt, is totally unnecessary and technically illogical. The Commission considered the potential for interference in the 1992 Report and Order and determined that an ERP of twenty (20) watts for fixed RTUs with automatic power controls, duty cycle requirements and the installation of filters on televisions experiencing interference would provide adequate protections for Channel 13 broadcasters. 1992 Report and Order at 1635. Since the Commission has permitted much higher ERP levels for fixed RTUs and CTSs within the Grade B contour, the limitation on mobile RTUs is ineffective as an

interference protection and only serves to crush the viability of the mobile application of this technology. The Commission determined that a fixed RTU operating at two-hundred (200) times the power limit on mobile RTUs did not create an appreciable potential for interference. It is technically illogical for the Commission to limit mobile RTUs to prevent interference, when the Commission has found that a quantum higher power level for fixed RTUs and CTSs met its interference concerns.

**B. The 100 Milliwatts Restriction Is A Substantial Barrier
To Expeditious Service To the Public.**

5. The Commission's decision to limit mobile RTUs to one-hundred (100) milliwatts was adopted in response to EON's request for IVDS mobility. However, since that time additional information has been developed on the propagation characteristics of the 218-219 MHz band. The one-hundred (100) milliwatts power limitation will serve as a substantial barrier to the Licensees' expeditious provision of service to the public. Field tests performed by one of the Licensee's engineers indicates that a mobile RTU, operating at one-hundred (100) milliwatts, has an effective range of a mile to a mile and a half. A CTS operating at one (1) watt has an effective range of five (5) miles. If this decision stands, Licensees will be forced to construct several remote receivers in each five (5) mile radius of the CTS to boost the mobile RTUs' signal so that it may reach the CTS. The construction and operation of these additional receivers will mean additional costs for antennas, leased lines, power supply and site location leases thus increasing the costs and the amount of time need to construct IVDS systems.

6. If mobile RTUs were permitted to operate at the same maximum power as fixed RTUs, the Licensees would not need to construct remote receivers to boost the mobile unit's signal, as the unit could reach the CTS anywhere within the transmitting range of the CTS. Allowing mobile RTUs to operate at the higher ERP would lower construction costs and allow Licensees to provide service to the public more expediently and at a lower cost. Consequently, retention of the one-hundred (100) milliwatt power limit is contrary to the public interest.

C. The Commission Can Protect For Interference Without Limiting Power To 100 Milliwatts.

7. Even assuming, arguendo, there is some justifiable unaddressed concern about interference from mobile RTUs, the 1996 Report and Order did not address the proven alternative means of preventing interference to the Grade B contour of Channel 13. Several different proposals were submitted to the Commission during the Comment period, and the Commission failed to adequately consider them when making its decision.

8. One such alternative is requiring the use of filters. When constructing fixed RTU service areas, IVDS licensees are required to notify television viewers within the Channel 13 Grade B area and ask them to report any interference. In the event of interference, the IVDS licensee must install a filter on the television to prevent interference. (See Section 95.861(d)). The Commission stated in the 1992 Report and Order that the filter offer was an integral part of TV Answer's plan to eliminate interference. In the Matter of Amendment of Parts 0, 1, 2 and 95 of the Commission's

Rules to Provide IVDS (Notice of Proposed Rulemaking), 6 FCC Rcd 1368, 1370

(1991). The Licensees are prepared to utilize this sensible measure to avoid interference, whenever necessary.

9. The Commission also did not adequately consider the possibility of dynamic power controls, as recommended by Interactive Management Services, L.L.C., and automatic power controls. When the Commission set the one-hundred (100) milliwatt ERP limit, the Commission removed the requirement that mobile RTUs contain automatic power controls. Automatic power controls ensure that an RTU only emits enough power to reach the CTS. Should the ERP for mobile RTUs be raised and the Commission desires an additional level of interference protection, automatic power controls could be again required to insure that the mobile RTUs only operate at the level necessary to reach the CTS, providing a rational and logical trade-off which would reduce the potential for interference with Channel 13.

10. Because CTSs can only operate at a maximum of one (1) watt ERP, Licensees must construct enough cell sites for the CTSs' signal to cover the service area at that power. If automatic power controls are installed within the mobile units, the ERP needed by an RTU to reach a CTS would never be greater than one (1) watt.

Permitting the mobile RTUs to operate at the same level as a fixed RTU would not create any additional interference, as the mobile RTU will only function at the same ERP as a CTS within the Channel 13 Grade B contour.

11. The Commission also failed to adequately recognize the ultimate interference protector: Section 95.861(e). Section 95.861(e) mandates that:

each IVDS system licensee must investigate and eliminate interference to television broadcasting and reception from its component CTSs and RTUs, within 30 days of the time it is notified in writing, by either an affected television station, an affected viewer, or the Commission, of an interference complaint. Should the licensee fail to eliminate the interference within the 30 days period, the CTS or RTU causing the interference must discontinue operation.

47 CFR 95.861(e).

12. As previously promoted in the Comments filed by many of the Licensees, these Rules provide Channel 13 broadcasters with a guarantee against any repeated interference from IVDS systems. This sensible protection, which already exists, effectively balances the need for Channel 13 broadcasters to be able to broadcast free of interference and the need for IVDS operators to expedite the delivery of an effective and economical service to the public.

13. Any of the above reasonable alternative means would lessen the potential interference to the Channel 13 Grade B contour, without the drastic increases in construction costs and delays in service to the public that will result from the one-hundred (100) milliwatt ERP limit for mobile RTUs. With the availability of these alternate means of reducing interference, limiting mobile RTUs' ERP to one-hundred (100) milliwatts is unnecessary.

III. Conclusion

14. When the Commission acted to limit mobile RTUs to a one-hundred (100) milliwatts ERP level, it did so in an arbitrary and capricious manner not in the public interest. The decision failed to adequately address why mobile RTUs should be limited to a different ERP than fixed RTUs, when there are sufficient safeguards to prevent interference. The FCC action did not adequately consider the impact the limitation would have on the implementation of IVDS technology and its ability to serve the public. Finally, the ruling did not adequately consider alternative means of preventing interference recommended in the Comments. The 1996 Report and Order stifles mobile IVDS by placing unnecessary operating limits on the service, producing a dramatic increase in system construction costs, while adding little or no interference protection to the Channel 13 operators.

15. The FCC has addressed several alternative means to the one-hundred (100) milliwatt limit when it allotted the spectrum for IVDS in the 1992 Report and Order. These alternatives are still viable and available, but were not addressed in the 1996 Report and Order. Considering the relatively small size of the Channel 13 Grade B contour and the fact that sixty percent (60%) of the television audience receives its signal through cable (which would effectively preclude interference to the broadcast signal), imposing a one-hundred (100) milliwatt cap on mobile RTUs is the equivalent of using a boulder when a pebble would do the job.

WHEREFORE, in light of the foregoing, the Licensees request that the Commission grant the relief requested in this Petition for Reconsideration.

Respectfully submitted,

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